

The Case for Benefit Corporation Law in Michigan

On September 16, 2010, I introduced legislation that would allow for-profit companies in Michigan to organize as "benefit corporations" (or "triple bottom line" companies). Only one hearing was held on this innovative corporate model and the bill died at the close of the legislative session. I introduced the legislation again in 2011 with Representative Wayne Schmidt and asked Senator Mark Jansen to kindly sponsor the same legislation in the Michigan Senate. And again, after one hearing in the Senate, the bills died at the close of the legislative session.

Meanwhile, states around us began to quickly pass benefit corporation legislation, on an overwhelmingly bipartisan basis, to attract young talented business entrepreneurs. Michigan sat on the sidelines while state after state joined this new club. Twenty states and the District of Columbia have opened their doors to benefit corporations – and more are coming.

The fact is, over the years, our state has responded to the changing needs of our business community by updating corporate laws to accommodate new and modern corporate structures. For example, Public Act 72 of 1917 codified Limited Partnerships; Public Act 192 of 1962 created the Professional Service Corporation; Public Act 284 of 1972 was the Business Corporation Act establishing the C Corporation in Michigan law; Nonprofit Corporations were codified by Public Act 162 of 1982; the Revised Uniform Limited Partnership Act – Public Act 213 of 1982 followed; Public Act 23 of 1993 created the Limited Liability Company; and Public Act 566 of 2008 created Low Profit Limited Liability Companies also known as L3C's.

With more and more demand by entrepreneurs and business owners to establish their companies as Benefit Corporations, states around us are responding by quickly passing benefit corporation legislation to attract these business to their states. If our state wants to be competitive and attractive to the business model that is preferred by young millennial corporate leaders and workers, we need to take action by passing HB 4526 and HB 4527.

Background Information:

I. What is a Benefit Corporation?

The primary purpose of a traditional for-profit company is to maximize shareholder value. Benefit corporations, on the other hand, retain the mission to maximize shareholder value, but making money or creating profit is not its only goal. Instead, a benefit corporation must balance its impact on society and the environment along with its for-profit status. Benefit Corporation Law requires transparent reporting of both financial and social/environmental statements and progress toward their stated

benefit mission. Most benefit corporation statutes also require a third-party validator to verify the benefit corporation's reporting and status and progress.

II. Why is Benefit Corporation Law necessary?

1. To protect the social/environmental mission of the company from shareholder lawsuits against the Board of Directors. In a traditional for-profit company, the Board has a fiduciary obligation to maximize shareholder value and shareholders can sue if there is a breach of that obligation. Since benefit corporations must balance their profits against their impact on society and the environment, this balance may result in lower profits or cost the company more to produce and sell its product. This situation can expose the Board to shareholder lawsuits. Benefit corporations that can organize under Benefit Corporation Law are protected from such lawsuits because the Board has dual fiduciary obligations: Create the most profit possible while making progress toward their social and environmental missions.
2. To attract talented entrepreneurs and workers. Millennials – the generation born between 1982 and 2002 – make up almost 25% of the population, are well educated, technologically savvy and want to work for a company that cares about its impact on our environment and society. According to the Net Impact Talent Report, 80% of 13-25 year olds want to work for a company that cares, and more than half would refuse to work for a company they considered irresponsible. Jean Meister, in her book The 2020 Workplace, reported that companies will increasingly focus on people, planet and profits as a way to attract and retain these talented workers – workers who will comprise about 50% of the workforce in 2020.
3. Socially responsible investing (SRI) is a powerful motivator. It's also not a new concept. SRI played an important role in ending apartheid in South Africa as governments and major corporations divested. In Michigan, the legislature has passed several laws that prohibit investing state assets in companies that transact business with Iran as well as promoting state investments in green technology businesses. The 2012 "Report on Sustainable and Responsible Investing Trends in the United States" reported that over one out of every nine dollars invested is invested using SRI strategies. In addition, almost 20% of the total value of global capital markets – over \$30 trillion in assets – is invested in firms that have adopted the Principles for Responsible Investment.
4. Michigan is falling behind. When I first introduced Benefit Corporation legislation (HB 6454 of 2010), our state would have been the third in the nation, behind Maryland and Vermont, and the first industrial state, to codify Benefit Corporations in law. No action was taken then, nor was action taken last term on HB 4615 and HB 4616. Meanwhile, the rest of the country is embracing benefit corporations and their entrepreneurial founders by passing such legislation on an overwhelmingly bipartisan basis: Arizona, Arkansas,

California, Colorado, Delaware, Hawaii, Illinois, Louisiana, Maryland, Massachusetts, Nevada, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, Washington and Washington DC.

III. Who is opposed to establishing Benefit Corporations in Michigan?

Some members of the Michigan business community have expressed concerns and comprise the opposition to benefit corporation legislation. Claiming the bills establish “good” companies and “bad” companies, they oppose the bills on the basis that for-profit companies should be equal. While this logic sounds reasonable, the fact is not all for-profit companies are treated equally in Michigan. For example, C corporations pay a 6% state income tax and non-C corporations pay zero. Some for-profit companies are low-profit entities and others are standard for-profit entities. Benefit corporations are simply standard for-profit entities that wish to consider their impact on society and the planet as well as earn profits. They see their social or environmental mission as a critical component their business and want to make sure their mission is protected. They also recognize that the workers of the millennial generation are attracted to triple bottom-line companies. That is why the majority of states that have successfully passed benefit corporation law have done so with the full support of their state’s chamber of commerce and on an overwhelmingly bipartisan basis.

IV. Are there any tax advantages or economic incentives offered to businesses that are incorporated as benefit corporations in the laws proposed in Michigan?

No.